

**WEINER
BRODSKY
SIDMAN
KIDER PC**



June 19, 2009

VIA HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

ENTERED
Office of Proceedings

JUN 19 2009

Part of
Public Record

RE: STB Finance Docket No. 35254, Red River Valley & Western Railroad Company
and Rutland Line, Inc. – Corporate Family Transaction Exemption

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Corporate Family Transaction Exemption of Red River Valley & Western Railroad Company pursuant to 49 C.F.R. § 1180.2(d)(3). Also enclosed is a check in the amount of \$1,300 to cover the cost of the filing.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Rose-Michele Nardi

FILED

JUN 19 2009

**SURFACE
TRANSPORTATION BOARD**

Enclosures

FEE RECEIVED

JUN 19 2009

**SURFACE
TRANSPORTATION BOARD**

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
AND RUTLAND LINE, INC. –
CORPORATE FAMILY TRANSACTION EXEMPTION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

STB FINANCE DOCKET NO. 35254

FILED

JUN 19 2009

**SURFACE
TRANSPORTATION BOARD**

Applicant's name and current mailing addresses:

Red River Valley & Western Railroad Company
116 4th Street S.
Wahpeton, ND 58074
(701) 642-8257

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Office of Proceedings**

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Applicant's representative to receive correspondence:

Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, DC 20036-1609

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**SURFACE
TRANSPORTATION BOARD**

Brief summary of the proposed transaction:

Douglas M. Head and Charles H. Clay (together, the "Shareholders") previously were the sole shareholders of Red River Valley & Western Railroad Company ("RRVW") and Rutland Line, Inc. ("Rutland"), both class III rail carriers. Mr. Head owned the vast majority of the stock in each of these two companies, and Mr. Clay owned the remaining shares.¹ On or about June 27, 2007, Messrs. Head and Clay contributed all of their stock in Rutland to RRVW², thereby causing Rutland to become a wholly-owned subsidiary of RRVW. The transfer merely resulted in the Shareholders indirectly controlling Rutland through their control of RRVW, rather than

¹ The Shareholders previously also had been the sole owners of the Twin Cities & Western Railroad Company ("TCW"), a class III rail carrier. See Finance Docket No. 31913, *Charles H. Clay, Douglas M. Head, and Kent P. Shoemaker – Continuance in Control Exemption – Twin Cities & Western Railroad Company*, Aug. 8, 1991. Mr. Clay died on March 1, 2009. His ownership interest in TCW is currently owned by his estate. It is expected that TCW will purchase his TCW shares. Mr. Head continues to hold his ownership interest in TCW. (In March 2000, Mr. Shoemaker relinquished his shares of TCW stock.) Minnesota Prairie Line, Inc., also a class III rail carrier, is a wholly-owned subsidiary of TCW. See STB Finance Docket No. 34068, *Twin Cities & Western Railroad Company, Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch – Continuance in Control Exemption – Minnesota Prairie Line, Inc.*, served June 6, 2002.

² As noted above, Mr. Clay died in 2009. His ownership interest in RRVW currently is owned by his estate. It is expected that RRVW will purchase Mr. Clay's RRVW shares. Mr. Head continues to hold his ownership interest in RRVW.

controlling Rutland directly. RRVW inadvertently did not seek the authority of the Surface Transportation Board to control Rutland prior to the transfer of the ownership interest in Rutland to RRVW.³ Accordingly, RRVW now seeks such authority. The subject transaction did “not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.” See 49 C.F.R. § 1180.2(d)(3). Thus, this transaction qualifies for the notice of exemption procedure for corporate family transactions.⁴

Proposed time schedule:

The proposed transaction has already been consummated. The exemption is expected to become effective as of July 19, 2009.

Purpose sought to be accomplished by the transaction:

The purpose of this corporate family transaction was to enable Rutland to be treated as a Qualified Subchapter S Subsidiary of RRVW for tax purposes.

States in which the property is situated:

RRVW and Rutland each have ownership and/or other operating rights in both Minnesota and North Dakota.

Maps:

A Map of RRVW and Rutland is attached hereto as Exhibit A. Pursuant to 49 C.F.R. § 1180.6(a)(6), twenty additional copies of the maps have been provided.

Agreements pertaining to the proposed transaction.

There was no written agreement governing the transfer of the Shareholders’ stock in Rutland to RRVW. Attached as Exhibit B is a Written Action by the Board of Directors and Shareholders of Rutland Line, Inc.

³ The Shareholders already had authority to control Rutland. See STB Finance Docket No. 33501, *Douglas M. Head, Kent P. Shoemaker and Charles H. Clay – Continuance in Control Exemption – Rutland Line, Inc.*, served Jan. 7, 1998, as clarified by the decision served Feb. 13, 1998 in the same proceeding. To the extent that the Shareholders need additional authority to control Rutland, as a result of the transfer of Rutland stock to RRVW, the Shareholders seek such authority by this Notice of Exemption. (In March 2000, Mr. Shoemaker relinquished his shares of Rutland stock.)

⁴ See also STB Finance Docket No. 33844, *Kansas City Southern Industries, Inc, Et Al. – Corporate Family Transaction Exemption*, served January 25, 2000 (corporate family transaction exemption for Class I railroad’s acquisition of stock of affiliated non-carrier that controlled two railroads); STB Finance Docket No. 34074, *RailAmerica, Inc., RailAmerica Transportation Corporation, and Otter Tail Valley Railroad Company -- Corporate Family Transaction Exemption*, served Sept. 14, 2001 (corporate family transaction exemption for transfer of stock of Class III railroad to a non-carrier entity)

Labor Protection

RRVW and Rutland are each class III rail carriers. Under 49 U.S.C. § 11326(c), no labor protection applies to a corporate family transaction, where only class III carriers are involved.⁵

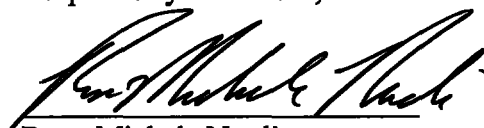
Environmental and Historic Report

Environmental documentation normally need not be prepared for an action that does not cause diversions from rail carriers to motor carriers greater than: “(A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line....” (49 C.F.R. § 1105.7(e)(4)), on the one hand, and that does not result in “(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment....” (49 C.F.R. § 1105.7(e)(5)), on the other hand. *See* 49 C.F.R. § 1105.6(c)(2).

Because the proposed transaction will not result in significant operational changes, the above-listed thresholds will not be exceeded. Therefore, environmental documentation is not necessary for this Verified Notice of Exemption.

Transactions involving “[a] sale, lease, or transfer of property between corporate affiliates” are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a) if significant operational changes do not occur. *See* 49 C.F.R. § 1105.8(b)(2). Because the proposed transaction meets the requirements of 49 C.F.R. §§ 1105.8(b)(2), historic documentation is not necessary for this Verified Notice of Exemption.

Respectfully submitted,



Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, D.C. 20036-1609

Dated: June 19, 2009

⁵ 49 U.S.C. § 11326(c); Finance Docket No. 32863, *Genesee & Wyoming, Inc. – Continuance in Control Exemption – Illinois & Midland Railroad, Inc.*, 1997 STB LEXIS 243, served Oct. 1, 1997, *aff’d per curiam*, *International Brotherhood of Locomotive Engineers v. Surface Transportation Board*, 172 F.3d 919, 1998 WL 720670 (D.C. Cir. September 14, 1998).

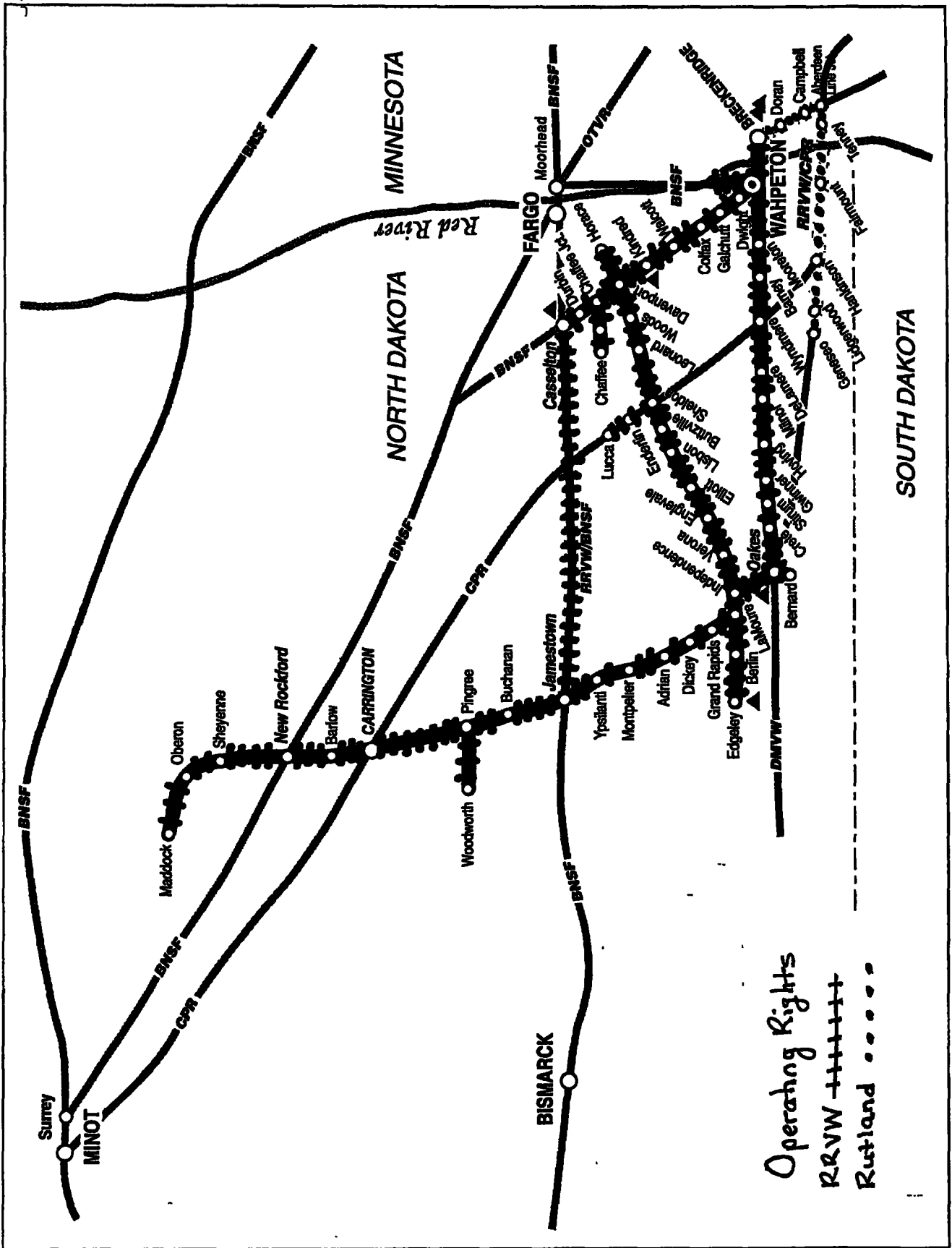
**RED RIVER VALLEY & WESTERN RAILROAD COMPANY,
AND RUTLAND LINE, INC. –
CORPORATE FAMILY TRANSACTION EXEMPTION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

STB FINANCE DOCKET NO. 35254

EXHIBIT A

MAP



**RED RIVER VALLEY & WESTERN RAILROAD COMPANY,
AND RUTLAND LINE, INC. –
CORPORATE FAMILY TRANSACTION EXEMPTION**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

STB FINANCE DOCKET NO. 35254

EXHIBIT B

WRITTEN ACTION

WRITTEN ACTION
BY THE BOARD OF DIRECTORS AND SHAREHOLDERS
OF
RUTLAND LINE, INC.

The undersigned, being all of the members of the Board of Directors and all of the Shareholders of Rutland Line, Inc., a Minnesota corporation (the "Company"), do hereby adopt the actions set forth below by unanimous written consent in lieu of a meeting, pursuant to Sections 302A.239 and 302A.441 of the Minnesota Business Corporation Act.

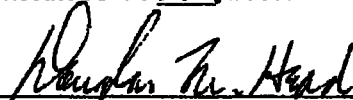
Election as Qualified Subchapter S Subsidiary.

WHEREAS, the Shareholders of the Company have contributed all of the issued and outstanding shares of the Company to Red River Valley & Western Railroad Company, a Minnesota corporation ("Red River Valley"), causing to Company to become a wholly-owned subsidiary of Red River Valley.

RESOLVED, that the officers of the Company be, and they hereby are, authorized and directed to take such actions as are necessary and appropriate to cause the Company to be taxed as a Qualified Subchapter S Subsidiary of Red River Valley.

FURTHER RESOLVED, that the officers of the Company be, and they hereby are, authorized and directed to execute such documents and to take such other actions as they, acting singly or jointly, deem necessary or desirable to effectuate the foregoing resolutions.

Executed June 27, 2007.



Douglas M. Head,
Director and Shareholder




Charles H. Clay,
Director and Shareholder



Kent P. Shoemaker,
Director
GP-2231128 v1

VERIFICATION

I, Andrew Thompson, President of Red River Valley & Western Railroad Company, certify under penalty of perjury that the foregoing notice of exemption is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption.



Andrew Thompson, President
Red River Valley & Western Railroad Company

Dated: June 17, 2009